

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.1817 of 2017

1. The Inspector General of Registration
No.100, Santhome High Road
Pattinapakkam
Chennai 600 028.
 2. The District Registrar (Administration)
Virudhunagar Registration District
Virudhunagar District.
 3. R.Kumaresan
 4. Secretary to Government
P & AR Department
Fort St. George
Chennai 600 009.
 5. Additional Chief Secretary to Government
(Full Addl. Charge)
Commercial Tax and Registration Department
Fort St. George
Chennai 600 009.
 6. Secretary to Government (In-charge)
Law Department
Fort St. George
Chennai 600 009.
- Appellants

Vs.

G.Dhanasekaran .. Respondent

Appeal under Clause 15 of Letters Patent directed against the order dated 23.01.2017 made in W.P.No.40941 of 2015 on the file of this Court praying to call for the records of the 1st respondent in the proceedings in letter 11161/A2/2015 dated 10.12.2015 and quash the same.

For Appellants : Mr.P.H.Arvinth Pandian
Addl. Advocate General
Assisted by
Mr.P.S.Sivashanmugasundaram, Spl.G.P.

For Respondents: Mr.M.S.Krishnan, S.C.
For Mr.P.Chandrasekaran

J U D G M E N T
(Made by Huluvadi G.Ramesh,J)

The writ appeal has been directed against the order of the learned single Judge dated 23.01.2017 made in W.P.No.40941 of 2015.

2. The facts which led to the filing of the appeal are as under:

The respondent is a directly recruited Sub Registrar Grade II vide proceedings dated 26.7.2008. At that time, he was placed at Serial No.9 and the third appellant was placed at serial No.11. By proceedings dated 05.9.2008, the respondent was called upon to choose Telugu as the third language and was also directed to pass the test within the period of probation. It appears that the name of the respondent was not included in the temporary panel of Grade I Sub Registrar for the year 2011-2012, however, the name of the third appellant was found at serial No.12. Even in the subsequent panel of the years 2012-13 and 2013-14, the name of the respondent was not included. Though the respondent passed the Registration Test, District Office Manual Test and Account Test for Subordinate Officers Part I within the period of probation, he did not pass the Telugu language test within the period of probation. As the respondent did not pass Telugu language Test and he passed the same only on 27.8.2013, the period of his probation was extended from 31.8.2011 to 31.8.2013. Therefore, the respondent made a representation to the appellants 1 and 2 on 16.3.2015, requesting to restore his original seniority in the category of Sub Registrar Grade II. Since no order was passed on his representation, the respondent filed a writ petition in W.P.No.31642 of 2015 and the same was disposed of by order dated 07.10.2015, directing the appellants 1 and 2 to consider the representation of the respondent and to pass orders within eight weeks. Pursuant to the said direction, on 10.12.2015, the first appellant considered the representation of the respondent and rejected the same on merits. Aggrieved by the same, the respondent filed a writ petition in W.P.No.40941 of 2015. The learned single Judge allowed the writ petition directing the first respondent to restore the seniority of the respondent and to include his name in the temporary panel for promotion for the year 2011-12 over and above the third respondent. Hence, the above writ appeal.

3. Heard Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the appellants and Mr.M.S.Krishnan, learned senior counsel appearing for the respondent.

4. Admittedly, the respondent was directly recruited as Sub Registrar Grade II by proceedings dated 26.7.2008. In the appointment order of the respondent, it has been specifically stated that the respondent will be on probation for a period of two years in the continuous service period of three years and that he has to pass the prescribed departmental examinations and also the third class language test within the period of probation.

5. It appears that the respondent had not passed the third class language test within the period of probation. Therefore, his probation was extended for a further period, up to 31.8.2013. However, the respondent had passed the third class language test on 27.8.2013 and therefore, he was declared to have been completed probation on 27.8.2013.

6. The crucial date for preparation of panel for promotion to the post of Sub Registrar Grade I is 1st April of every year. At the time of preparation of panel for promotion to the post of Sub Registrar Grade I for the year 2011-12, the respondent was not qualified and had not completed probation. However, the third respondent was qualified and had completed probation and therefore, his name was included in the panel for promotion to the post of Sub Registrar Grade I for the year 2011-12. The respondent qualified himself only on 27.8.2013 and therefore, his name was included in the panel for promotion to the post of Sub Registrar Grade I for the year 2014-15.

7. According to the appellants, as per Rule 2(b) of the Special Rules for the Tamil Nadu Registration Subordinate Service, promotion to the post of Sub Registrar Grade I will be made among the holders of Sub Registrar Grade II on the ground of merit and ability and seniority will be considered only where merits and ability are approximately equal.

8. Further, Rule 7 of the Tamil Nadu Registration Subordinate Service Rules mandates that every person appointed to the post of Sub Registrar Grade II by direct recruitment has to pass the language test, within the period of probation and on failure to pass the Language Test within the period of probation, the period of probation will be extended, at the discretion of the Government.

9. As per Section 41(1) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, no member of a service or class of a service shall be eligible for promotion from the

category in which he was appointed to the service unless he has satisfactorily completed his probation in that category.

10. In the instant case, though the respondent is senior to the third appellant, he lacks merit for considering him for promotion to the post of Sub Registrar Grade I, as he has failed to qualify himself with a pass in the Language Test within the period of probation.

11. It is pertinent to note that as per Rules, as on 1st April 2011, the respondent, in order to make himself eligible for promotion to the post of Sub Registrar Grade I, ought to have completed the probation period successfully. But, the respondent had not passed the Telugu language test within the period of probation and therefore, his name was not included in the panel for promotion for the year 2011-12. However, the respondent had passed the Language Test in the extended period of probation. Though the probation period was extended to accommodate the respondent for passing the Language Test, that itself will not entitle the respondent to claim seniority, applying the doctrine of relation back. His seniority is to be based on merit cum seniority, merit refers to passing of probation period as on the date of notification for filling up the post of Sub Registrar Grade I. Since he was not qualified as on that date, he cannot seek the benefit of equity of Doctrine of Relation Back. Had he been qualified, his seniority would have been continued to original position since his qualification.

12. The respondent suffered disqualification at the time of the preparation of panel for the year 2011-12 and qualified himself only during the extended period of probation, in 2013 and thus, he would be eligible for inclusion of his name only in the panel for the year 2014-15. Such completion of probation during the extended period will not entitle him to restore back the original seniority. Now his prayer is to include his name over and above his juniors, the third appellant herein in the panel of the year 2011-12.

13. In this regard, reliance is placed on the judgment of the Apex Court in *Saroj Rani v. State of Punjab* [(1999) 6 SCC 637], wherein, in para 24, it is held as follows:

"24. So far as Question (e) regarding the preference inter se between the candidates who passed the test within the first five chances and the others who passed in more than five chances is concerned, we find the reasons given by the High Court in the impugned judgments including the Full Bench in *Baldev Raj* (*Baldev Raj Vs. State of Punjab - CWP.No.16959 of 1994* decided on 17.09.1996 (P & H) (FB)) to be well considered, which does not call for any interference. It is

not in dispute, the promotion to the post of Assistant from amongst the eligible candidates is seniority-cum-merit. Eligible candidate in this context means all those who passed the examination in less than or more than five chances. They constitute one group. There is no division among the qualifiers either under the rules or any order. This one cohesive group has to wait for promotion till vacancy arises. Regarding the promotion from among these eligible candidates, when the principle of seniority-cum-merit is to be applied, there cannot be any preference inter se among the said two groups. Thus the impugned order has rightly concluded, no preference can be given to those who have qualified in the first five chances over those who qualified in more than five chances."

14. In the judgment referred to above, what is being noted is that there is no division among the qualifiers either under the Rules or any order. In the instant case, there is a division for the persons who have completed the departmental examination and being found eligible within two years of probation and the persons who have not completed the departmental examination within the period of probation. The respondent has qualified himself only after two years and though he got promoted subsequently as Sub Registrar Grade I, since he was not qualified within the period of probation, it amounts to a division among the persons who were found eligible to compete to the post of Sub Registrar Grade I on merit cum seniority much before the crucial date for the preparation of panel, namely 1st April. Therefore, we are of the view that there is no discrimination of the respondent and that there was only a division by virtue of his conduct with regard to his eligibility for considering him for promotion to the post of Sub Registrar Grade I.

15. At the same time, it cannot be stated that Article 311 of the Constitution will apply to the disqualification suffered by the respondent. Though the respondent passed the Telugu language test only in the extended period of probation, in order to protect his interest, he has been accorded with increment. Thus, failure on the part of the respondent to make himself qualified for including his name in the panel for promotion to the post of Sub Registrar Grade I will not attract the provisions of Article 311 of the Constitution, particularly when there is no reduction in rank of the respondent.

16. Furthermore, the respondent suffered disqualification by virtue of his conduct in not passing the Telugu Language Test within the stipulated period. Therefore, even the principles of

Doctrine of Relation Back will not apply to the case of respondent.

17. That apart, a perusal of the order passed by the second appellant would disclose that in the process of preparation of panel for promotion, only merit cum seniority has been adopted and since the respondent had not qualified himself with pass in Telugu language test, his name was not included in the panel for promotion to the post of Sub Registrar Grade I for the years 2011-12, 2012-13 and 2013-14. However, the name of the respondent was included in the panel for promotion for the year 2014-15, only after he has qualified himself with a pass in Telugu Language Test only on 27.8.2013.

18. The person who passed the Telugu language within the original period of probation, i.e. two years form one class and the person who passed subsequently during the extended period must form a different class and thus, they cannot be treated equally on the point of merit, when it is specifically provided that promotion is based on merit cum seniority. Therefore, when two persons stand on same merit, then seniority would play the role. As such, the respondent having qualified only in the year 2014-15, is not entitled to seek seniority over the third appellant who was promoted earlier on the basis of merit cum seniority, on the only ground that he is senior to the third appellant.

19. In view of the above, we are of the considered opinion that the respondent is not entitled to restore his original seniority. Accordingly, the order of the learned single Judge is set aside and the writ appeal is allowed. However, there shall be no order as to costs. Consequently, CMP No.22763 of 2017 is closed.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

kpl

+2 Ccs to Mr.P. Chandrasekaran, Advocate sr 3866.
+1 CC to Govt. Pleader sr 4619.

W.A.No.1817 of 2017

SP(07/05/2018)